

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MICHAEL I. CUNNINGHAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-018-JHP-KEW
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff, acting *pro se*, commenced this case on January 12, 2015 with the filing of the Complaint to Review Decision of Secretary of Health & Human Services. A review of the case file reveals that Plaintiff secured service and Defendant filed an answer and the administrative transcript. Thereafter, Plaintiff was directed by order entered April 2, 2015 to file his brief-in-chief by June 1, 2015. To date, no brief has been filed.

Thereafter, on September 16, 2015, this Court entered an Order directing Plaintiff to show cause in writing by September 28, 2015 as to why the undersigned should not enter findings for consideration by the District Judge presiding over this case, recommending that this case be dismissed for the failure to file his brief in chief as ordered by this Court. The Order was mailed by the Clerk's office by first class mail and the correspondence was not returned to this Court.

In an abundance of caution, on October 7, 2015, this Court issued a Second Order to Show Cause, providing Plaintiff until

October 20, 2015 to respond and directing the Clerk's office to mail the Order by return receipt. To date, the correspondence has not been returned but neither has the signed return receipt been mailed back to the Clerk.

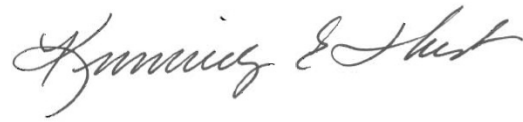
Plaintiff has not filed the report in response to either show cause order or made any other filing to further the prosecution of this case. It is Plaintiff's responsibility as the initiator of this litigation to insure that this Court has his updated mailing address information and to keep abreast of the schedule established by the Court for the orderly progression of this action.

Dismissal for the failure to prosecute is discretionary based upon the circumstances presented. Fed. R. Civ. P. 41(b); United States v. Berney, 713 F.2d 568, 571 (10th Cir. 1983). Dismissal under Rule 41(b) is viewed as an imposition of a sanction. Mobley v. McCormick, 40 F.3d 337, 340 (10th Cir. 1994). In this case, Plaintiff has provided no explanation for his failure to prosecute this action. Consequently, dismissal is appropriate.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that this case be **DISMISSED** for Plaintiff's failure to prosecute.

The parties are herewith given fourteen (14) days from the date of the service of these Report and Recommendation to file with the Clerk of the court any objections, with supporting brief. Failure to object to the Report and Recommendation within fourteen (14) days will preclude appellate review of the judgment of the District Court based on such findings.

IT IS SO ORDERED this 30th day of October, 2015.

A handwritten signature in cursive script, reading "Kimberly E. West".

KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE